**IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 02-36290

STETSON & ASSOCIATES, INC.
A FL CORP.

Debtor

**MEMORANDUM ON MOTION TO COMPEL**

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**RICHARD STAIR, JR.**
**UNITED STATES BANKRUPTCY JUDGE**

Presently before the court is a Motion to Compel filed on February 20, 2003, by Ann Mostoller, the Chapter 7 Trustee in this bankruptcy case, requesting that the Debtor's representative, Daniel Stetson, be compelled to answer questions under oath at a meeting of creditors held pursuant to 11 U.S.C.A. § 341 (West 1993 & Supp. 2003). *See also* 11 U.S.C.A. § 343 (West 1993) and 11 U.S.C.A. § 521(3) (West 1993). In support of her Motion to Compel, the Trustee argues that Mr. Stetson waived his right to invoke his Fifth Amendment privilege by testifying in prior discovery depositions and answering questions in his voluntary individual Chapter 7 bankruptcy petition, statements, and schedules. Mr. Stetson filed his Response to Motion to Compel on April 3, 2003, asking the court to deny the Motion to Compel, based upon his Fifth Amendment assertions against self-incrimination. In the alternative, if compelled to answer the Trustee's questions, Mr. Stetson requests that he be allowed to answer in writing so that he may provide justification for asserting his Fifth Amendment rights.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(A), (O) (West 1993).

**I**

The Debtor filed a Voluntary Petition under Chapter 7 of the Bankruptcy Code on December 2, 2002. By Order of the court entered on January 15, 2003, Mr. Stetson was designated as the Debtor's representative, and he was ordered to appear at the meeting of creditors scheduled for January 14, 2003, to testify, under oath, on behalf of the Debtor.[1] On January 14,

[1] The meeting of creditors was originally scheduled for January 14, 2003. It was adjourned to and subsequently held on January 16, 2003. The meeting of creditors was then adjourned to February 6, 2003, at which time it was adjourned to March 13, 2003. On March 13, 2003, the meeting of creditors was once again adjourned to April 24, 2003.

2003, Mr. Stetson filed a Motion for Protective Order or for Order Continuing 11 U.S.C. § 341 Hearings and for an Expedited Hearing on this Motion (Motion for Protective Order).[2] In the Motion for Protective Order, Mr. Stetson, in essence, sought to give a blanket assertion of his Fifth Amendment rights against self-incrimination. The court delivered its opinion on January 15, 2003, in which it ruled as follows:

> [A] protective order will not issue excusing Mr. Stetson's appearance at the § 341 Creditors' Meeting for his individual case or for Deer Path Vacations, L.P., Stetson & Associates of Tennessee, Inc., and Stetson & Associates of Florida, Inc. These creditors' meetings will proceed at their presently scheduled time. Clearly, Mr. Stetson may invoke his Fifth Amendment privilege as to specific, potentially incriminating questions, but not generally by way of a blanket assertion of the privilege. The parties will need to determine the practicality of this, and this is not to say the court will be sitting, waiting for you to come to me with each individual question asked - I will not. If he chooses to assert his privilege, which he has indicated he will, and the proceedings are transcribed, any party desiring to question the propriety of Mr. Stetson's response to questions propounded to him may do so by an appropriate motion. I suspect that a lengthy examination of Mr. Stetson is not going to be particularly productive.

*In re Stetson*, No. 02-36399, Mem. Op., at 10 (Bankr. E.D. Tenn. Jan. 15, 2003). Pursuant to the court's decision, the Debtor's meeting of creditors was held on January 16, 2003. Mr. Stetson appeared at the meeting of creditors on behalf of the Debtor and invoked his Fifth Amendment rights against self-incrimination as to every question asked by the Trustee. Although several

[2] The Motion for Protective Order was filed in Mr. Stetson's individual Chapter 7 bankruptcy case, number 02-36399; however, in the Motion for Protective Order, he sought to be excused from appearing not only at his individual meeting of creditors, but also at those scheduled for his three related business cases for which he had been designated as representative pursuant to the court's December 5, 2002 Order: (1) the Debtor herein; (2) Stetson & Associates of Tennessee, Inc., case number 02-35452; and (3) Deer Path Vacations, L.P., case number 02-35451.

creditors were represented at the § 341 meeting, only the Trustee actually propounded any questions to Mr. Stetson.[3]

The Trustee filed her Motion to Compel on February 20, 2003, requesting that the court enter an order compelling Mr. Stetson "to appear and answer questions under oath." Additionally, the Trustee argues that Mr. Stetson "has waived his right to invoke the Fifth Amendment privilege against self-incrimination by voluntarily answering questions posed during prior discovery depositions and answering questions in his voluntary Chapter 7 petition [and his sworn schedules of assets and statement of affairs] pertaining to books, records, financial statements, partners, officers, directors, and shareholders of the Debtor corporation." In support of her Motion to Compel, the Trustee filed a Brief in Support of Motion to Compel on February 20, 2003, and an Attachment to Brief in Support of Motion to Compel (the Attachment) on March 24, 2003, to which she attached transcripts of two discovery depositions of Mr. Stetson taken in *Altman v. Stetson & Associates, Inc.*, no. 01-5900, Circuit Court for the Thirteenth Judicial District for the State of Florida.[4]

In response, Mr. Stetson filed his Response to Motion to Compel on April 3, 2003. In support of his Response, Mr. Stetson attached a copy of a Subpoena to Testify Before Grand Jury in the United States District Court for the Middle District of Florida dated November 25, 2002, calling him to testify on December 19, 2002 regarding "an investigation of possible violations of

[3] Other parties appearing but not asking questions were J. Michael Winchester, William L. Cooper, William T. Hendon, Chapter 7 Trustee for Mr. Stetson's individual bankruptcy case, and Patricia C. Foster, on behalf of the United States Trustee.

[4] The Trustee filed the Attachment at the court's request, in that she had referred to the discovery depositions in her Motion to Compel but had not filed the depositions themselves.

criminal laws involving conspiracy to commit securities fraud, mail fraud, and/or wire fraud, and related offenses." Additionally, Mr. Stetson attached a copy of a letter dated March 27, 2003, from Anthony J. LaSpada, Esq., in Tampa, Florida, to Mr. Stetson's Tennessee attorneys, confirming that he "was advised by representatives of the government that Dan Stetson is currently a target of a Grand Jury Investigation ongoing in the Middle District of Florida, Tampa Division, and possibly elsewhere." Mr. Stetson maintains that any testimony or statements that he gives may later be used against him in the ongoing criminal investigation, and that the subpoena and letter confirm that he has a real fear of incrimination. Accordingly, he requests that the court deny the Motion to Compel. Additionally, in the event that he is required to answer questions, Mr. Stetson requests that he be allowed to provide his answers in writing in order that he may provide clarifications and/or reasons to justify his Fifth Amendment assertions.

**II**

The Fifth Amendment of the United States Constitution provides, in part, that "[n]o person shall be . . . compelled in any . . . case to be a witness against himself." U.S. CONST. AMEND. V. The privilege applies in both criminal and civil cases to protect any witness from being compelled to disclose information that he "reasonably believes could be used in a criminal prosecution [against him] or could lead to other evidence that might be so used." *Bank One of Cleveland, N.A. v. Abbe*, 916 F.2d 1067, 1074 (6th Cir. 1990) (quoting *Kastigar v. United States*, 92 S. Ct. 1653, 1656 (1972)). "[T]he Fifth Amendment proscribes only self-incrimination obtained by a 'genuine compulsion of testimony.'" *United States v. Washington*, 97 S. Ct. 1814, 1818 (1977) (quoting *Michigan v. Tucker*, 94 S. Ct. 2357, 2362 (1974)). "Absent some officially

coerced self[-]accusation, the Fifth Amendment privilege is not violated by even the most damning admissions. Accordingly, unless the record reveals some compulsion, [a witness's] incriminating testimony cannot conflict with any constitutional guarantees of the privilege." *Washington*, 97 S. Ct. at 1818-19.

In order to invoke the privilege, the witness must make a "valid assertion" of his Fifth Amendment rights. *Donovan v. Fitzsimmons (In re Morganroth)*, 718 F.2d 161, 167 (6th Cir. 1983). "A valid assertion of [this] privilege exists where a witness has reasonable cause to apprehend a real danger of incrimination." *Morganroth*, 718 F.2d at 167 (citing *Hoffman v. United States*, 71 S. Ct. 814, 818 (1951)). He must show "a 'real danger,' [of incrimination] and not a mere imaginary, remote or speculative possibility of prosecution." *Morganroth*, 718 F.2d at 167 (citing *United States v. Apfelbaum*, 100 S. Ct. 948, 955-56 (1980)). It is then for the court to decide if his silence is justified. *See Morganroth*, 718 F.2d at 167; *Abbe*, 916 F.2d at 1076 ("[T]he privilege claimant does not initiate [a hearing to determine whether the alleged fears of self-incrimination are legitimate]; rather, it is 'incumbent *upon the trial court* . . . to conduct a particularized inquiry.'") (emphasis in original) (citations omitted). The court has "broad discretion to determine whether or not the claim to the privilege has merit." *United States v. Gibbs*, 182 F.3d 408, 431 (6th Cir. 1999).

A witness may not make a blanket assertion, nor may he invoke the privilege before being sworn in and asked questions. *Morganroth*, 718 F.2d at 167; *see also Gibbs*, 182 F.3d at 431; *United States v. Mahar*, 801 F.2d 1477, 1495 (6th Cir. 1986). He must "object with specificity to the information sought [in order] to permit the court to rule on the validity of the claim of

privilege." *Sec. & Exch. Comm'n v. First Fin. Group of Tex., Inc.*, 659 F.2d 660, 668 (5th Cir. 1981). ?The privilege must be asserted . . . with respect to particular questions, and in each instance, the court must determine the propriety of the refusal to testify." *Morganroth*, 718 F.2d at 167. ?[S]ufficient evidence is presented . . . if [the] court can, by the use of reasonable inference or judicial imagination, conceive a sound basis for a reasonable fear of prosecution." *Morganroth*, 718 F.2d at 169. The court will then conduct a particularized inquiry and decide, ?in connection with each specific area that the questioning party seeks to explore, whether or not the privilege is well-founded." *First Fin. Group of Tex., Inc.*, 659 F.2d at 668 (quoting *United States v. Melchor Moreno*, 536 F.2d 1042, 1049 (5th Cir. 1976)).

?The privilege against self-incrimination is wholly personal and ‹cannot be utilized by or on behalf of any organization, such as a corporation[.]'" *In re Lufkin*, 255 B.R. 204, 210 (Bankr. E.D. Tenn. 2000) (quoting *United States v. White*, 64 S. Ct. 1248, 1251 (1944)). Additionally, ?[a] corporate officer may not withhold testimony or documents on the ground that his corporation would be incriminated[, n]or may the custodian of corporate books or records withhold them on the ground that he personally might be incriminated by their production." *Curcio v. United States*, 77 S. Ct. 1145, 1148 (1957). On the other hand, a witness cannot be compelled to give testimony that will incriminate himself personally, even if the information sought concerns a corporation or business entity, as agents of such entities do retain their Fifth Amendment privilege against self-incrimination. *United States v. O'Henry's Film Works, Inc.*, 598 F.2d 313, 316 (2d Cir. 1979) (citing *Curcio*, 77 S. Ct. at 1148-49; *Wilson v. United States*, 31 S. Ct. 538, 546 (1911)). ?[F]orcing [a business's] custodian to testify orally as to the whereabouts of nonproduced records

requires him to disclose the contents of his own mind[, and h]e might be compelled to convict himself out of his own mouth. That is contrary to the spirit and letter of the Fifth Amendment." *Curcio*, 77 S. Ct. at 1148-49.

As in this case, a debtor may assert his Fifth Amendment rights at a § 341 meeting of creditors. *See, e.g., In re French*, 127 B.R. 434, 436 (Bankr. D. Minn. 1991); *In re Hulon*, 92 B.R. 670, 674 (Bankr. N.D. Tex. 1988). However, because the debtor is entitled to invoke the privilege only to genuinely threatening questions[, he is] therefore . . . required to take the oath and listen to each question propounded by the trustee." *Hulon*, 92 B.R. at 675. If a debtor wishes to assert the Fifth Amendment at a meeting of creditors, he must make the assertion to each question which would require a potentially self-incriminating answer." *French*, 127 B.R. at 435.

In this case, Mr. Stetson has clearly shown that he can reasonably fear the possibility of incrimination by testifying, in that there is actually an ongoing criminal investigation against him being conducted in Florida. The court agrees that Mr. Stetson may not be compelled to give damaging testimony against himself, nor may he be compelled to give testimony that could lead those investigating him to additional damaging or incriminating evidence. *See Abbe*, 916 F.2d at 1074.

**III**

The next issue before the court is whether Mr. Stetson waived his right to invoke the Fifth Amendment privilege by giving testimony in two discovery depositions in a state court action in Florida. The Fifth Amendment privilege against self-incrimination is deemed waived unless

invoked." *Rogers v. United States*, 71 S. Ct. 438, 440 (1951). Additionally, it **?**can be waived by failing to invoke it in a timely fashion and[/or] by disclosure of incriminating evidence." *Krasny v. Nam (In re Gi Yeong Nam)*, 245 B.R. 216, 227 (Bankr. E.D. Pa. 2000). Courts will not infer a party's waiver of his constitutional rights lightly. *Smith v. United States*, 69 S. Ct. 1000, 1007 (1949). Every reasonable presumption against waiver shall be indulged. *Emspak v. United States*, 75 S. Ct. 687, 692 (1955).

**?**Implicit or testimonial waiver of the privilege against self-incrimination will be inferred from a witness' prior statements with respect to the subject matter of the case." *In re Blan*, 239 B.R. 385, 393 (Bankr. W.D. Ark. 1999). In other words, once an incriminating fact is revealed by a witness, he cannot then invoke the Fifth Amendment privilege to avoid disclosure of details unless his answer would subject him to a **?**real danger" of further incrimination. *Gi Yeong Nam*, 245 B.R. at 227. The test adopted by the majority of courts for determination of whether a party has waived his Fifth Amendment privilege is known as the *Klein* test, which provides that:

> a court should only infer a waiver of the fifth amendment's privilege against self-incrimination from a witness' prior statements if (1) the witness' prior statements have created a significant likelihood that the finder of fact will be left with and prone to rely on a distorted view of the truth, and (2) the witness had reason to know that his prior statements would be interpreted as a waiver of the fifth amendment's privilege against self-incrimination.

*Klein v. Harris*, 667 F.2d 274, 287 (2d Cir. 1981); *see also United States v. Singer*, 785 F.2d 228, 241 (8th Cir. 1986); *In re Vitamins Antitrust Litig.*, 120 F. Supp. 2d 58, 66 (D.D.C. 2000); *United States v. Cox*, 836 F. Supp. 1189, 1201 (D. Md. 1993); *In re Stoecker*, 103 B.R. 182, 187 (Bankr. N.D. Ill. 1989); *In re Mudd*, 95 B.R. 426, 429-30 (Bankr. N.D. Tex. 1989) (adopting the *Klein* test); *cf. Davis v. Wilson (In re Wilson)*, 50 B.R. 701, 703 (Bankr. E.D. Tenn. 1985) (citing

the *Klein* test without adopting).[5] The court agrees with the majority of courts and will follow the test set forth in *Klein*.

As to the first prong of the *Klein* test, once an individual begins testifying about an issue, he may not ?relate only part of the story and decide to stop[, but instead,] must fully disclose what he started to recount and be amenable to cross-examination on the topic." *Blan*, 239 B.R. at 394. The court must decide whether the individual's prior statements have ?created a significant danger of distortion," as waiver of the Fifth Amendment privilege should only be inferred in the ?most compelling of circumstances." *Klein*, 667 F.2d at 288. ?These circumstances are present ‹only when a failure to find a waiver would prejudice a party to the action, and a finding of a waiver would not be unfair to the witness.'" *Horwitz v. Sheldon (In re Donald Sheldon & Co., Inc.)*, 193 B.R. 152, 163 (Bankr. S.D.N.Y. 1996) (quoting *E.F. Hutton & Co., Inc. v. Jupiter Dev. Corp., Ltd.*, 91 F.R.D. 110, 116 (S.D.N.Y. 1981)). In a bankruptcy case, ?[c]ompelling circumstances do not exist unless a failure to find a waiver would unduly prejudice the trustee." *Hulon*, 92 B.R. at 674.

To satisfy the second prong of the *Klein* test and infer a waiver, the individual's prior statements must be

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[5] A second test, recently formulated by the Bankruptcy Court for the Eastern District of Pennsylvania, provides that:

> before precluding a witness from invoking his Fifth Amendment right against self-incrimination after he has provided voluntary testimony in the same proceeding, a court must find that: (i) the question seeks details about incriminating facts to which the individual has already testified; and (ii) the witness' answer to the particular question posed would not tend to further incriminate him.

*Gi Yeong Nam*, 245 B.R. at 227. This test is a modification of the *Klein* test, based upon the notion that the *Klein* test added elements to Supreme Court jurisprudence. *Gi Yeong Nam*, 245 B.R. at 227 n.9; *see also Teitelman v. Dale Petroleum (In re A & L Oil Co., Inc.)*, 200 B.R. 21, 25 (Bankr. D.N.J. 1996).

> (a) ?testimonial," meaning that they were voluntarily made under oath in the context of the same judicial proceeding, and (b) ?incriminating," meaning that they did not merely deal with matters ?collateral" to the events surrounding commission of the crime, but directly inculpated the witness on the charges at issue.

*Klein*, 667 F.2d at 288 (citations omitted). The court further explained this requirement as follows:

> Where a witness has made statements that were both ?testimonial" and ?incriminating," as those terms are defined above, he has made statements that, by virtue of their ?testimonial" nature, will likely influence the finder of fact, and that, by virtue of their ?incriminating" nature, contain information that the witness was privileged not to reveal. Thus, any witness who makes testimonial, incriminating statements plainly has reason to know, when he does so, that these statements may be interpreted as a waiver of his fifth amendment privilege against self-incrimination. Such a witness certainly is not treated unfairly, then, if a court ultimately interprets the statements in this fashion.

*Klein*, 667 F.2d at 288.

In the scope of bankruptcy law, each debtor has one case which may contain many proceedings. *See generally*, 28 U.S.C.A. § 157; *Hulon*, 92 B.R. at 674. Because ?the trustee should be able to utilize information freely given in the § 341 meeting in furtherance of his statutory obligations to administer a case[,] . . . the § 341 meeting cannot be found to be independent of the [proceedings] that follow . . . [, and] there will be times when a § 341 meeting and the litigation that flows therefrom are a unitary proceeding for the purpose of waiver of the Fifth Amendment privilege; however, there also may be times when they are not." *Gi Yeong Nam*, 245 B.R. at 232-33; *see also Blan*, 239 B.R. at 395; *Hulon*, 92 B.R. at 674. ?In focusing on the relationship of the subsequent action to the purpose of the § 341 meeting, . . . a proper balance between the constitutional rights of the debtor and the statutory purposes of the bankruptcy case can be achieved." *Gi Yeong Nam*, 245 B.R. at 233. Accordingly, if a debtor testifies at a § 341 meeting or 2004 examination in his general bankruptcy case, he may in some cases be

unable to assert his Fifth Amendment rights as to related adversary proceedings based upon the same facts. The incriminating statement requirement of *Klein's* second prong will be satisfied if the debtor's prior statements ?might provide a clue leading investigators to discover facts that could constitute links in a chain of circumstantial evidence proving the [debtor's] criminal conduct." *Blan*, 239 B.R. at 395 (quoting *Hulon*, 92 B.R. at 674).

Here, the discovery depositions upon which the Trustee relies for her argument that Mr. Stetson waived his Fifth Amendment privilege were not taken in the same judicial proceeding, but rather, they were conducted in a separate, state court action in May and July 2002, months before this bankruptcy case was even filed. Clearly, this state court action is not the same proceeding as the Debtor's Chapter 7 bankruptcy proceeding. Accordingly, Mr. Stetson did not waive his right to assert his privilege against self-incrimination under the Fifth Amendment by testifying in two discovery depositions taken in connection with a state court action months before this bankruptcy was commenced.

The Trustee also asserts that Mr. Stetson waived his Fifth Amendment rights against self-incrimination by filing his individual Chapter 7 bankruptcy statements and schedules. Again, even though the two might be related, Mr. Stetson's individual Chapter 7 bankruptcy is not the same judicial proceeding as the Debtor's Chapter 7 bankruptcy case. Moreover, even if that were not the case, the filing of a debtor's bankruptcy schedules does not, without more, constitute a waiver of his Fifth Amendment rights. *See, e.g., O'Halloran v. Williams (In re Keller Fin. Servs. of Fla., Inc.)*, 259 B.R. 391 (Bankr. M.D. Fla. 2000) (because the principal of the debtor proved a nexus between the discovery requests sought and the ongoing criminal investigation of the debtor, he was

not required to answer incriminating questions, despite having filed bankruptcy statements and schedules for himself personally, as well as for ten debtor corporations); *Holiday Bank v. Scarfia (In re Scarfia)*, 104 B.R. 462 (Bankr. M.D. Fla. 1989) (the court found waiver based upon the debtor's extensive testimony in prior depositions and § 341 meetings, in supplementation to the debtor's statements and schedules); *Olson v. Potter (In re Potter)*, 88 B.R. 843 (Bankr. N.D. Ill. 1988) (the debtor properly invoked her Fifth Amendment rights at a § 341 meeting regarding her financial situation despite having filed complete bankruptcy statements and schedules initiating her voluntary chapter 11 case).

Mr. Stetson properly invoked his Fifth Amendment privilege against self-incrimination at the meeting of creditors when he stated his intentions in response to each individual question propounded by the Trustee. His prior testimony in a state court proceeding was not a valid waiver of the privilege, nor did he waive the privilege by filing complete statements and schedules in his individual Chapter 7 bankruptcy case. On the other hand, the Trustee has a statutory obligation to administer the Debtor's bankruptcy estate. Accordingly, the court will continue the inquiry as to the nature of the specific questions asked by the Trustee and the particular answers sought from Mr. Stetson and determine if he can be compelled to answer them.

## IV

The Trustee did not, in accordance with the court's January 15, 2003 ruling, designate in the Motion to Compel specific questions from the Debtor's meeting of creditors that she wants the court to compel Mr. Stetson to answer. She did, however, in the Attachment, reference eight portions of Mr. Stetson's prior discovery depositions where he answered certain questions. Accordingly, because she has not otherwise designated, the court will presume that the Trustee seeks the answers to only those questions addressed in the Attachment. The court will examine each question individually to determine if it is incriminatory and whether Mr. Stetson will be compelled to provide the Trustee with an answer.

First, in the Attachment, the Trustee references information regarding Mr. Stetson's background, education, residence, and employment. However, in reviewing the transcript of the § 341 meeting of creditors conducted by the Trustee on January 16, 2003, the court found no questions asked of Mr. Stetson regarding this information. The court will not require Mr. Stetson to provide the Trustee with information that was not properly requested at the meeting of creditors nor will the court give the Trustee an advisory opinion regarding how it might rule on the Debtor's anticipated assertion of his Fifth Amendment privilege to a question that he has not been asked.

Next, the Trustee seeks information regarding when the Debtor was formed. This question was asked by the Trustee at the meeting of creditors. The Debtor is a Florida corporation, and this information is available to the public through the Florida Secretary of State. Because the Fifth Amendment privilege is personal to individuals, it cannot be invoked as to businesses. The court does not believe that Mr. Stetson exposes himself to any self-incrimination by answering this

question, most notably because this information is otherwise ascertainable as a matter of public record. As such, Mr. Stetson shall be required to inform the Trustee the date upon which the Debtor was formed.

Next, the Trustee references deposition testimony regarding whether Mr. Stetson is licensed to sell real estate in the State of Tennessee. After reviewing the transcript of the January 16, 2003 meeting of creditors, the court found no question asked by the Trustee regarding this issue. Again, for reasons previously stated, the court will not require Mr. Stetson to provide the Trustee with this information.

The Trustee also seeks information regarding stock ownership, officers of the Debtor, and licenses the Debtor possesses. However, upon review of the transcript from the meeting of creditors, the only questions asked by the Trustee remotely relating to this information were the following:

> Q: Mr. Stetson, what is your position in this corporation, this debtor corporation?
>
> . . . .
>
> Q: Where would the corporate notebook be, the document containing the charter, bylaws, et cetera?

*In re Stetson & Assocs., Inc., a Fl Corp.*, No. 02-36290, Tr. of § 341 Meeting of Creditors (Jan. 16, 2003), at p. 3, ll. 24-25; p. 11, ll. 10-12. Regarding Mr. Stetson's position with the Debtor, presumably, this information is contained in the Debtor's corporate filings and is available from the Florida Secretary of State. This information is not personal as to Mr. Stetson, but rather, seeks information personal to the Debtor, a corporation, which cannot invoke the privilege. Since the Trustee actually requested this information at the meeting of creditors, Mr. Stetson shall be

required to answer for the Trustee his position, including any offices that he has held or continues to hold, with the Debtor. Because he was not asked at the meeting of creditors, Mr. Stetson shall not, however, be required to provide to the Trustee any information regarding the remaining officers of the Debtor or the Debtor's stock structure, nor will Mr. Stetson be required to advise the Trustee as to any licenses held in the past or currently by the Debtor. As for the Trustee's inquiry as to the location of the corporation documents of the Debtor, the court finds that this information is testimonial in nature, in that it requests authentication of the fact, which could lead to incriminating evidence against Mr. Stetson. *See Curcio*, 77 S. Ct. at 1148; *O'Henry's Film Works, Inc.*, 598 F.2d at 316. Mr. Stetson shall not be required to provide to the Trustee the location of the Debtor's corporate records. *See Curcio*, 77 S. Ct. at 1148-49.

The Trustee also seeks information regarding whether Dale Martin is affiliated with the Debtor and, if so, in what capacity. At the meeting of creditors, the Trustee specifically asked Mr. Stetson the following questions regarding Mr. Martin:

> Q: There are two other individuals besides yourselves who are listed as former officers or shareholders. Those are Dale Martin and . . . . Are you still in contact with [this] individual[]? . . . What was [his] role in this debtor corporation?"

*In re Stetson & Assocs., Inc., a Fl Corp.*, No. 02-36290, Tr. of § 341 Meeting of Creditors (Jan. 16, 2003), at p. 7, ll. 18 - p. 8, ll. 1. Mr. Martin's role with the Debtor does not personally concern Mr. Stetson, and it could potentially be ascertained through a review of the Debtor's corporate filings with the Florida Secretary of State. Correspondingly, Mr. Stetson shall inform the Trustee of any offices or positions that Mr. Martin held or holds in the Debtor. Conversely, Mr. Stetson shall not be required to elaborate further regarding Mr. Martin's role with the Debtor.

Furthermore, Mr. Stetson shall not be required to answer the Trustee's question regarding whether he remains in contact with Mr. Martin, as that information could conceivably be incriminating.

Next, the Trustee seeks information regarding bank accounts and/or payments made from any bank accounts. At the meeting of creditors, the Trustee asked Mr. Stetson to identify the banks at which the Debtor maintained accounts and requested the location of the Debtor's bank records. Even though the Trustee did request bank account information from Mr. Stetson at the meeting of creditors, once again, the court believes that this information is testimonial in nature, requiring authentication as to the fact, which could incriminate Mr. Stetson personally. *See Curcio*, 77 S. Ct. at 1148; *O'Henry's Film Works, Inc.*, 598 F.2d at 316. Mr. Stetson shall not be required to answer any questions concerning any bank accounts maintained previously or presently by the Debtor. Similarly, Mr. Stetson shall not be required to disclose locations of any records regarding any bank accounts of the Debtor, as such information would be considered testimonial, and is protected by his Fifth Amendment privilege. *See Curcio*, 77 S. Ct. at 1148-49.

**V**

Mr. Stetson has requested that he be allowed to answer the Trustee's questions in writing so that he may clarify and justify his reasons behind asserting the Fifth Amendment; however, the court refers Mr. Stetson, and his attorney, to its January 15, 2003 opinion, in which the court expressly ruled that Mr. Stetson must offer more than a mere blanket assertion of his Fifth Amendment privilege and in which the court directed counsel for all parties that it would not entertain motions to compel over and over. In other words, all parties seeking information from Mr. Stetson were expressly instructed to go ahead and ask him all of the questions that they sought

answers to, and at that time, in addition to asserting the Fifth Amendment, Mr. Stetson was required to provide adequate justification for invoking his Fifth Amendment rights such that the court would have all of the necessary information to makes its determinations. Accordingly, the court will direct Mr. Stetson to appear at the April 24, 2003 adjourned meeting of creditors at which time he will respond to the questions previously propounded to him by the Trustee to the extent directed by the court in this Memorandum.

An order consistent with this Memorandum will be entered.

FILED: April 14, 2003

BY THE COURT

/s/ RICHARD STAIR, JR.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 02-36290

STETSON & ASSOCIATES, INC.
A FL CORP.

Debtor

**O R D E R**

For the reasons stated in the Memorandum on Motion to Compel filed this date, the court directs the following:

1. The Motion to Compel filed February 20, 2003, by Ann Mostoller, Trustee, is GRANTED in part and DENIED in part.

2. Daniel Stetson shall appear at the April 24, 2003 adjourned meeting of creditors at which time he shall respond to the questions propounded to him by the Trustee that are the subject of the Motion to Compel. His responses to these questions shall be in the manner and to the extent directed by the court in the Memorandum on Motion to Compel.

SO ORDERED.

ENTER: April 14, 2003

BY THE COURT

/s/ RICHARD STAIR, JR.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE